

Application No. 10/699,385  
Response to Office Action of June 16, 2004

### REMARKS

With this Amendment, claims 1-20 remain pending. Applicants now respond to the Detailed Action.

#### Claim Rejections – 35 U.S.C. § 112

Claims 1-12 and 20 were rejected under 35 U.S.C. § 112 as allegedly being statutorily indefinite. Applicants traverse the rejections based upon the language of claims 1, 11, 12 and 20 on the grounds that the differences pointed out by the Examiner did not rise to the level of a violation of § 112, second paragraph. The meaning of each original claim is readily understood by one possessing a level of ordinary skill in the art. In fact, this is fully supported by the Examiner's ability to assert multiple rejections of the claims quoting language from the claims including the complained of language. At best, the language is merely objectionable.

However, in view of the fact that infringing copies of this invention are already being offered for sale in the United States through the Internet, the language of claims 1, 11, 12 and 20 has been made more parallel to one another to expedite allowance.

Finally, while the rejection of claim 10 is traversed, claim 10 and the specification paragraph [0031] and [0043] have been amended to insert "value" after each occurrence of "durometer". It is believed that those of ordinary skill in this art use the term "durometer" as shorthand for durometer value. In any event, the meaning would be understood by anyone of ordinary skill in this art. However, in view of the imminent if not presently occurring infringement, claim 10 is amended to advance the prosecution.

#### Claim Rejections – 35 U.S.C. § 102

Claims 1, 2, 6, 7, 9, 3 and 13 were rejected as being anticipated by U.S. Patent 6,394,876 B1 to Ishimoto. Applicants traverse both the Examiner's characterization of Ishimoto and the rejection.

With respect to the characterization, the component 30, which is identified by Examiner as the "first link" of Ishimoto, is nowhere positioned against the element 50 of Ishimoto, which is identified by Examiner as the "chassis". While the "link (30)" may move towards and away from the "chassis (50)", it is not positioned against the chassis, except perhaps at an upper side thereof but only in the extended position (Fig. 5 of Ishimoto), the opposite of the relation being

Application No. 10/699,385  
Response to Office Action of June 16, 2004

claimed. Furthermore, the "first link (30)" does not, in any configuration, transversely span the axis of the identified "first drive wheel (53)" of the vehicle. The "first link (30)" is always located forwardly of the axis of wheel 53.

Applicants further traverse the rejection of claim 9, in particular, on the grounds that Ishimoto says and suggests nothing about the construction of the wheels or even the provision of tires on the wheels.

The Examiner's characterization and the rejection of claims 1, 6, 8 and 13 as anticipated by U.S. Patent No. 4,597,744 to Rehkemper et al. are also traversed on the ground that the alleged "first link (12)" of Rehkemper does not, in any configuration of vehicle 10, transversely span the claimed wheel axis, which is the central axis of axle 36.

In particular, the Examiner is directed to the ordinary meaning of "spanning", which is defined with its transitive verb root, "span", and the past tense form, "spanned", in *Merrriam-Webster's Collegiate Dictionary*, 10<sup>th</sup> Ed., at p. 1126, a copy of which is attached. The first definition of "span", "spanning", "spanned" is "measuring", which has no applicability in this claim or in the specification. The second definition is:

2 a : to extend a cross <a career that is now *spanned* for decades>

b : to form an arch over <a small bridge *spanned* upon>

c : to place or construct a span over.

This definition comports with the use of "span" and "spanning" in the present application and claims. In neither reference, Ishimoto or Rehkemper, does the element identified by the Examiner as constituting the "first link" of the claims, transversely span what the Examiner has identified as the wheel axis of the first drive wheel. Thus, not only are these claims not anticipated by Ishimoto and Rehkemper, they are not even rendered obvious by those references since both references teach and suggest only configurations different from that which has been claimed.

#### Claim Rejections - 35 U.S.C. § 103

Claims 11 and 12 are rejected as obvious over Ishimoto in view of U.S. Patent No. 6,540,583 B1 to Hoeting et al., while claims 9, 11 and 12 are also rejected as obvious over

Application No. 10/699,385  
Response to Office Action of June 16, 2004

Rehkemper in view of Hoeting. The Examiner's characterization of the teaching of Hoeting is traversed for the following reasons. The Examiner characterizes Hoeting stating that the

first driven wheels (22, 24) [of Hoeting] have tread on the tires to provide extra friction to aid in propelling the vehicle along the support surface, thereby teaching the first driven wheels having a coefficient of friction greater than the first non-driven wheels.

The Examiner does not identify and the undersigned representative cannot find any reference in Hoeting to the construction of the wheels or characterization of the tires in particular. Furthermore, Applicants specifically traverse the Examiner's characterization and reasoning that the provision of tread on the rear (driven) wheels 22, 24 provides extra friction. It is a well known fact that the provision of tread provides less friction than the absence of tread and that, with respect to tires, treadless surfaces provide maximum friction. This is why treadless "sticks" are used in automobile racing. Tread provides grip in soft and/or loose material by digging into (i.e. interference engagement with) the material.

Furthermore, the combination cited by the Examiner still does not satisfy the spanning language of independent claim 1. Thus, even if the art supported the combination as proposed by the Examiner, that combination still would not satisfy the language of the claims.

#### ***Allowable Subject Matter***

The Examiner has indicated claims 3-5 and 14-20 be allowable over the prior art. It is respectfully submitted that claim 20 is now allowable as the language complained of in that claim has been revised. Applicants defer placing claims 3-5 and 14-19 into independent form pending the determination of the allowability of the remaining rejected claims.

#### **Supplemental Information Disclosure Statement**

Attached hereto is a copy of a Supplemental IDS filed by mailing on May 26, 2004 on the above-identified application, together with a copy of a return card showing that this IDS was received on June 1, 2004. The Examiner is respectfully requested to consider the references listed on the attached form PTO/SB/08A and to return a copy of that form bearing the Examiner's initials to indicate consideration.

Application No. 10/699,385  
Response to Office Action of June 16, 2004


**CONCLUSION**

In view of the foregoing Amendment and Remarks, it is respectfully submitted that the present application, including claims 1-20 is in condition for allowance and such action is respectfully requested.

Respectfully submitted,

Jason C. Lee, et al.

22 July 2004  
(Date)

  
John Jamieson  
Attorney/Agent for Applicants  
Registration No. 29,546  
Direct Dial: 215-965-1310  
E-Mail: jjamieson@akingump.com

Akin Gump Strauss Hauer & Feld LLP  
One Commerce Square  
2005 Market Street, Suite 2200  
Philadelphia, PA 19103  
Telephone No.: 215-965-1200  
Fax No.: 215-965-1210

JJ:vbm